

REMARKS

In response to the Office Action mailed August 24, 2004, reconsideration and allowance are respectfully requested.

The undersigned thanks the Examiner for the courtesy of a telephonic interview on February 7, 2005. To date, Applicant has not received from the Examiner an Interview Summary form. The substance of the interview is reflected in the following.

The rejection of claims 45, 46, 51-55, 63, 64, 66, 67, 68, 70-74, 76, 77, and 78 under § 102 as being anticipated by Schulze (U.S. Patent No. 1,386,078) is traversed.

The present invention concerns an accessory for a liquid container, in particular a beverage container. As recited in independent claims 45 and 66, the accessory includes first and second clamping members and extending portions that extend away from each other and from a vertical axis of the second clamping member with a directional component that is transverse to a vertical axis of the second clamping member. In addition, according to the independent claims, first and second clamping surfaces (on the first clamping member) are “pressed against an inner surface of the container” and with a third clamping surface (on the second clamping member) is “engaging an outer surface of the container.”

In contrast, the Schulze reference relates to an egg holder for a plate. Schulze teaches using a “plate engaging clamp” that is “applied to the edge of the plate.” (Schulze at lines 22 & 42.) The Examiner considers the plate to be a “container” and asserts that Schulze discloses “first and second clamping surfaces (areas contacting the plate)” and “a third clamping surface (area contacting the plate).” (8/24/04 Office Action at 3.) But the Examiner does not suggest that Schulze teaches either first and second clamping surfaces that are “pressed against *an inner surface* of the container” or a third clamping surface that is “engaging *an outer surface* of the container,” elements that are explicitly recited in claims 45 and 66.

Moreover, Schulze in fact does not disclose those recited elements. Schulze nowhere describes the plate as a container having inner and outer surfaces that could contain a significant amount of liquid. Nor are plates generally described as including inner and outer surfaces; instead, a plate is generally said to have a front side and back side. Indeed, plates are generally not used to contain liquids. Because claims 45 and 66 recite structure concerning inner and outer surfaces of a container, the independent claims distinguish over Schulze.

To more clearly distinguish the claims from Schulze, Applicant now amends claims 45 and 66 to specify that the extending portions, which define at least first and second clamping surfaces, are “elastically deformable.” These amendments incorporate an element in claim 47, which is canceled. Even if it could be said that Schulze somehow discloses extending portions that define at least first and second clamping members as claimed in claims 45 and 66, Schulze nowhere teaches that such extending portions may be elastically deformable. Schulze suggests only that arms 8, which hold the egg, are “resilient.” (Schulze at line 30.)

At least for the foregoing reasons, Schulze does not anticipate independent claims 45 or 66, or dependent claims 46, 51-55, 63, 64, 67, 68, 70-74, 76, 77, and 78.

The Examiner’s rejection of claims 47, 65, and 75 under § 103(a) as obvious in view of Schulze is also traversed. Claim 47 is canceled. Claim 65 depends ultimately from independent claim 45, and claim 75 depends from independent claim 66. As described above, Schulze nowhere discloses a device that includes clamping surfaces that are “pressed against an inner surface of the container” or “engaging an outer surface of the container,” as recited in independent claims 45 and 66.

Nor would it be obvious to an ordinarily skilled artisan to achieve the present invention by modifying Schulze’s egg holder for a plate. This may be seen by analogizing the plate shown in Schulze to the container described in the present invention. As shown in

Schulze's Fig. 1, the egg holder is used to hold an egg substantially perpendicular to the ground so that "the top of the shell may be broken and the egg eaten from the shell." (Schulze at lines 44-45.) Assume that, analogously, the back side of a plate corresponds to an inner surface and the front side of the plate corresponds to an outer surface for, say, a 12-ounce drinking-glass. Accordingly, in Schulze's Fig. 1, the extending portions of the first clamping member would be elements 2, and the second clamping member would be element 1. But having elements 2 include the first and second clamping surfaces "pressed against an inner surface" of the glass, and element 1 include the third clamping surface "engaging an outer surface" of the glass, would have the egg hanging outside the glass and substantially parallel to the ground. This would not allow "the top of the shell [to] be broken and the egg eaten from the shell." In fact, for this parallel-to-the-ground position, there is no indication in Schulze that the egg holder would even be able to hold the egg — especially when, as would be expected, someone tried to lift the glass and drink a beverage from it.

On the other hand, one could assume that, analogously, the *front* side of a plate corresponds to an inner surface and the *back* side of the plate corresponds to an outer surface of the glass. According to this reading of Schulze, having element 1 include the first and second clamping surfaces "pressed against an inner surface" of the glass, and having elements 2 include the third clamping surface "engaging an outer surface" of the glass, would again have the egg substantially parallel to the ground, but this time hanging so as to cover or be within at least part of the glass's opening. Again, this would not allow "the top of the shell [to] be broken and the egg eaten from the shell." And in this position, aside from there being no indication in Schulze that the egg holder would be able to hold the egg, drinking from the glass with the egg blocking at least part of the opening would be difficult if not impossible.

As these examples show, the Schulze egg holder for a plate is unsuitable for use with beverage or other liquid containers, as an accessory according to the present invention would be used. The present invention therefore is not obvious in view of Schulze.

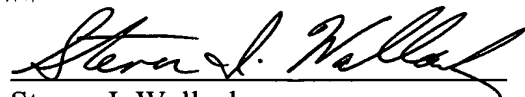
Additionally, the Examiner asserts that “[t]he material from which the device is made is considered an obvious matter of engineering having no patentable significance. The deformation of the members of the instant invention are inherently [sic] to the material from which the device is made.” (8/24/04 Office Action at 3-4.) But the elastically deformable extending members recited in the currently amended independent claims are particularly well-suited to the various sizes of the circumferences of, for example, beverage containers. There is no need for elastically deformable extending members for an egg holder for a plate, as Schulze describes.

For at least the foregoing reasons, Schulze cannot render obvious claims 65 and 75.

Applicant acknowledges the Examiner’s objection to dependent claims 49, 50, 56-62, and 69, but declines at this time to rewrite those claims in independent form, given that the independent claims are believed to be allowable.

In view of the foregoing, this application is believed to be in condition for allowance, and a Notice to that effect is respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven I. Wallach", written over a horizontal line.

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